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No. 331

In the Supreme Court of the United States

OCTOBER TERM, 1932

DOMINIC A. TRUDA, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 331

DOMINIC A. TRUDA, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the Court of Claims (R. 11) is not yet reported.

JURISDICTION

The judgment of the court below was entered May 31, 1932. (R. 11.) The petition for a writ of certiorari was filed August 31, 1932. (R. 12.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

DISCUSSION

With one exception the facts in the instant case are identical with those in the case of *McDonnell* v.

United States, now pending before this Court on petition for certiorari, October Term, 1932, No. 330. Petitioner, who was in partnership with McDonnell during the year 1917, filed his income tax return for that year on March 29, 1918, and on February 23, 1926, filed a waiver with respect to assessment and collection of additional income tax in order to secure a special assessment of the partnership's excess profits taxes under Section 210 of the Revenue Act of 1917. (R. 6–8.) The only difference between the two cases is that here the petitioner, upon receipt of the 30-day letter advising him of a proposed deficiency assessment of his 1917 income tax, waived his right to appeal to the Board of Tax Appeals and consented to assessment in the amount determined by the Commissioner. (R. 10.) The instant case, therefore, does not present the question of sufficiency of the notice of assessment, which is raised in the *McDonnell* case, but the other two questions presented in that case are in issue here.

For the reasons stated in our memorandum in the *McDonnell* case we do not oppose this petition, but we suggest that the writ, if granted, be limited to the question of validity of the waiver of the statute of limitations under Section 278 (e) of the Revenue Act of 1924.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

OCTOBER, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932